

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. 2021-192-E**

SOUTH CAROLINA  
OFFICE OF  
REGULATORY STAFF

IN RE: Dominion Energy South Carolina,  
Incorporated Coal Retirement Docket  
Opened Pursuant to Commission Order  
No. 2021-418

**RESPONSE TO JOINT  
MOTION REQUESTING  
AMENDED  
PROCEDURAL  
SCHEDULE &  
CLARIFICATION OF  
SCOPE OF  
PROCEEDING**

Pursuant to S.C. Code Ann. Regs. 103-826, the South Carolina Office of Regulatory Staff (“ORS”) respectfully submits this Response to the Joint Motion Requesting Amended Procedural Schedule and Clarification of Scope of Proceeding filed by the Sierra Club, Southern Alliance for Clean Energy (“SACE”), the South Carolina Coastal Conservation League (“CCL”), and the Carolina Clean Energy Business Alliance (“CCEBA”) (referred to herein as the “Second Joint Motion”).

## INTRODUCTION

On June 9, 2021, the Public Service Commission of South Carolina (“Commission”) issued Order Number 2021-418, which opened a docket regarding Dominion Energy South Carolina, Incorporated’s (“DESC” or the “Company”) retirement of coal plants “so that the company and the parties can advise the Commission on an appropriate procedural schedule along with any statutory or regulatory deadlines that might need to be addressed.” Additionally, the Order permitted all interested parties and stakeholders the ability to provide comments.<sup>1</sup>

<sup>1</sup> See Order No. 2021-418.

On October 4, 2021, DESC, SACE, CCL, CCEBA and the South Carolina Energy Users Committee (“SCEUC”) filed a Joint Motion to amend the Commission-created procedural schedule proposing that all parties file direct testimony and exhibits by May 16, 2022; all parties file responsive testimony and exhibits by June 6, 2022, and the hearing occur no sooner than June 30, 2022 (“Joint Motion”).<sup>2</sup> The Commission granted the Joint Motion and adopted the proposed procedural schedule through Directive Order No. 2021-722 dated October 27, 2021.

On March 2, 2022, through the Second Joint Motion, the Sierra Club, SACE, CCL, and CCEBA jointly moved to amend the procedural schedule and sought clarification regarding the scope of the above-referenced docket. The ORS did not object to the Joint Motion to amend the procedural schedule that was filed on October 4, 2021, and it takes no position on the request to amend the procedural schedule in the Second Joint Motion.

According to the Second Joint Motion, there is a tension between Commission Order No. 2020-832, which rejected DESC’s proposed 2020 Integrated Resource Plan, and Order No. 2021-418, which created docket No. 2021-192-E. According to the Second Joint Motion, “it is unclear whether the Commission intends for the Coal Retirement Docket to be merely informational, advising the Commission on pertinent regulatory or statutory deadlines, or substantive, for the Parties to evaluate the scope and adequacy of DESC’s Coal Retirement Study and, as contemplated by Order No. 2020-832....”<sup>3</sup> The Second Joint Motion also asserts that “[b]ased on the fact that the Commission set a procedural schedule which included deadlines for Direct Testimony, Responsive Testimony, and a Hearing date coupled with the language in Order No. 2020-823, this docket should substantively address the contents of the Coal Retirement Study.”<sup>4</sup> The ORS offers the following response to the request for clarification regarding the scope of Docket No. 2021-192-E.

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<sup>2</sup> See Joint Motion.

<sup>3</sup> Second Joint Motion, p. 6.

<sup>4</sup> *Id.*

## DISCUSSION

The ORS asserts that this docket should be informational. As ORS stated in its Responsive Comments to DESC's 2021 Integrated Resource Plan ("IRP") Update,

The Commission provided direction in Order No. 2020-832 to require information to be developed within the coal retirement proceeding in order 'to inform'<sup>5</sup> the IRP process beginning with the 2022 IRP Update, prior to any retirement decisions being reached. The Commission also provided direction requiring retirement options to be modeled in the 2023 comprehensive IRP.<sup>6</sup>

Order No. 2020-832 states that Docket No. 2021-192-E "will evaluate the reliability risks and environmental costs of continued operation of the coal plants as well as options, informed by resource bids, to replace legacy coal technology with state-of-the-art clean energy."<sup>7</sup> However, Order No. 2021-418 only contemplates that parties have the ability to "comment" on the appropriate procedural schedule "along with any statutory or regulatory deadlines...."<sup>8</sup> In order to harmonize both Order Nos. 2020-832 and 2021-418, Docket No. 2021-192-E should function as an information gathering docket that serves to better inform the IRP process.

Moreover, any order issued in Docket No. 2021-192-E that requires DESC to retire coal plants, the method or date by which it must retire coal plants, or selection of a particular generation source to be used in place of coal plant generation has a high likelihood of substituting the Commission's judgment for that of DESC management. "Public service commissions are not designed to supplant the managers or directors of public utilities or to substitute their discretion and judgment for that of the officers and directors chosen to operate the utilities."<sup>9</sup> Additionally, "a commission cannot interfere

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<sup>5</sup> Order 2020-832, p.17.

<sup>6</sup> ORS's Resp. Comments for DESC's 2021 IRP Update, Feb. 14, 2022, p. 6.

<sup>7</sup> Order No. 2020-832, p. 40.

<sup>8</sup> Order No. 2021-418.

<sup>9</sup> 64 Am. Jur. 2d *Public Utilities* § 151 (2011) (citing *United Fuel Gas Co. v. Pub. Serv. Comm'n of W. Va.*, 174 S.E.2d 304 (W.Va. 1969)). *See also* Commission Order No. 2005-42 ("[w]hile this Commission's decisions are often based on the prudence or imprudence of management decisions, those decisions involve a review of the management decisions, and this Commission has no authority to manage the utility. But while this Commission cannot manage the day to day operations of the utility, this Commission can require utilities under its jurisdiction to investigate various avenues or strategies to assist the utility.")

with the internal management decisions of a utility.”<sup>10</sup> The Commission does not have the statutory authority to mandate the timing and nature of resource retirement or the selection of which generation resources must be built. For these reasons, any comments filed in reply to the Company’s Coal Retirement Study must be for informational purposes only.

### CONCLUSION

When read together, the instructions given in Order Nos. Order Nos. 2020-832 and 2021-418 indicate that Docket No. 2021-192-E should be followed to advise the Commission on an appropriate procedural schedule along with any statutory or regulatory deadlines that might need to be addressed.

Respectfully submitted,




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Columbia, South Carolina  
 March 14, 2022

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<sup>10</sup> 64 Am. Jur. 2d *Public Utilities* § 151 (2011) (citing *Pub. Serv. Co. of Okla. v. State, ex rel. Corp. Comm'n*, 948 P.2d 713 (Okla. 1997)).

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IN RE: Dominion Energy South Carolina, )  
 Incorporated Coal Retirement Docket Opened ) **CERTIFICATE OF**  
 Pursuant to Commission Order No. 2021-418 ) **SERVICE**  
 )

This is to certify that I, Vicki L. Watts, have this date served one (1) copy of the **SOUTH CAROLINA OFFICE OF REGULATORY STAFF RESPONSE TO JOINT MOTION REQUESTING AMENDED PROCEDURAL SCHEDULE & CLARIFICATION OF SCOPE OF PROCEEDING** in the above-referenced matter to the person(s) named below by causing said copy to be electronically mailed, addressed as shown below:

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March 14, 2022  
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